

STATE OF MICHIGAN  
COURT OF APPEALS

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In re J. MARTINEZ, Minor.

UNPUBLISHED  
November 20, 2014

No. 321602  
Kent Circuit Court  
Family Division  
LC No. 12-052009-NA

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Before: M. J. KELLY, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

Respondent-mother appeals as of right the April 1, 2014 order terminating her parental rights to the minor child under MCL 712A.19b(3)(b)(i) (parent caused physical injury to the child and there is a reasonable likelihood of abuse if returned to parent), (j) (reasonable likelihood of harm if the child is returned to parent), (k)(iii) (battery, torture, or other severe physical abuse), and (k)(iv) (loss or serious impairment of an organ). We affirm.

“In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). A trial court must also find by a preponderance of the evidence that termination is in the child’s best interests before it can terminate parental rights. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

Respondent does not challenge the trial court’s finding that statutory grounds for termination were established by clear and convincing evidence. As such, we presume that the trial court did not clearly err in finding that the unchallenged statutory grounds were established by clear and convincing evidence. *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1998), overruled in part on other grounds *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000).<sup>1</sup>

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<sup>1</sup> Nevertheless, we note there was ample evidence to establish the statutory grounds for termination. The evidence produced at the termination hearing established that the child suffered from physical abuse at the hands of respondent, as respondent admitted punching the child in the eye with a closed fist, slapping him with an open hand, and biting him. The abuse perpetrated by respondent permanently blinded the child in one of his eyes. Respondent pleaded *nolo contendere* to first-degree child abuse during the pendency of the proceedings. In addition,

The only argument respondent raises on appeal is that termination was not in the minor child's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). We review a trial court's finding that termination is in the child's best interests for clear error. *Id.*

"In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *Id.* at 41-42 (internal citations omitted). In *In re VanDalen*, 293 Mich App at 141, when reviewing best interests, this Court looked at evidence that the children were not safe with the respondent, were thriving in foster care, and that the foster home could provide stability and permanency.

On appeal, respondent argues that termination was not in the child's best interests because she was well bonded to him and loved him. This Court focuses on *the child*—not the parent—when reviewing best interests, *In re Trejo Minors*, 462 Mich at 356, and the record supports that the child was not bonded to respondent, with one foster care worker describing the bond between the child and respondent as "minimal to nonexistent." When the child was in respondent's sole care, he suffered injuries that an expert testified were the result of abuse, including bruising on both sides of his face, inner ear bruising, a torn frenulum, a bite mark on his thigh, and a laceration to his right eyelid that required surgery to repair. The three-year-old child was blind in his right eye at the time of termination because of physical abuse admittedly caused by respondent. Respondent had two visitations with the child in July 2012, but she failed to appropriately interact with him. Respondent pleaded *nolo contendere* to first-degree child abuse during the proceeding. The child had not seen respondent for 20 months at the time of termination because she was either in jail or prison for most of the proceeding. A foster care worker opined that it was unknown whether the child would even recognize respondent. Respondent failed to take responsibility for causing the child's injuries at any point after July 2012, thus supporting that he would not be safe in her care. See *In re VanDalen*, 293 Mich App at 141.

Further, the child required stability and permanency, and respondent was unable to provide it to him at the time of termination or within a reasonable time in the future. See *In re Olive/Metts Minors*, 297 Mich App at 41-42. Contrary to respondent's argument on appeal, the record does not support that she benefitted from any participation with the agency while she was incarcerated. And, respondent was unable to participate in services while in solitary confinement, which was the result of her own aggressive behavior. Additionally, respondent will not be released from prison until sometime between 2015 and 2027. Because of respondent's poor behavior in prison in the time leading up to termination, it was believed that she would not be released in 2015.

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respondent had a history of mental illness that she refused to treat with medication, displayed violent behavior on numerous occasions, and was often uncooperative with services offered to her. The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.

Finally, the record establishes that the child “significantly improved” in the foster home, that he was having fewer trauma reactions, and that he was bonded to the foster parents. The child had language development issues, and he required an attentive caregiver to bring him to therapy sessions and work with him in the home so that his language skills could continue to improve. The foster parents were in tune with the child’s special needs and were willing to adopt both him and his biological sister, who was also placed in the foster home. See *In re Olive/Metts Minors*, 297 Mich App at 41-42 (explaining that the trial court may consider the advantages of foster care). The trial court did not clearly err in determining that termination of respondent’s parental rights was in the best interests of the child. See *id.* at 40

Affirmed.

/s/ Michael J. Kelly  
/s/ Jane M. Beckering  
/s/ Douglas B. Shapiro